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care, but employers are not insurers, and can only be held liable in damages for an injury where the employer's negligence is averred and proved.

[Ed. Note.—For other cases, see *Master and Servant*, Cent. Dig. § 172; Dec. Dig. § 101, 102(2).* 9 Va.-W. Va. Enc. Dig. 696.]

12. Trial (§ 155*)—Question of Law or Fact—Demurrer to Evidence.—Where there is a demurrer to the evidence, if the evidence is such that a jury might have found a verdict for the demurree, the court must so find and grant judgment in his favor.

[Ed. Note.—For other cases, see *Trial*, Cent. Dig. §§ 346, 352, 353; Dec. Dig. § 155.* 4 Va.-W. Va. Enc. Dig. 522.]

13. Trial (§ 105(1)*—Reception of Evidence—Admission without Objection.—The rule that, if a litigant permits evidence to go to the jury which would have been excluded if objected to, the jury may consider it, and give it such weight as they think it entitled to, does not apply to evidence which has no bearing on any fact in issue.

[Ed. Note.—For other cases, see *Trial*, Cent. Dig. §§ 260, 261, 266; Dec. Dig. § 105(1).* 5 Va.-W. Va. Enc. Dig. 337.]

14. Master and Servant (§ 150(4)*—Injuries to Servant—Rules and Methods of Work.—Mining Act (Acts 1812, c. 178) § 22, requiring every mine operator to adopt special rules covering all the work pertaining to the mine in and outside of the same, does not require such rules in reference to everything done inside and outside of the mines, nor rules relating to ordinary details of the employment involving work of a simple character well understood by the employee.

[Ed. Note.—For other cases, see *Master and Servant*, Cent. Dig. § 305; Dec. Dig. § 150(4).* 9 Va.-W. Va. Enc. Dig. 685.]

Error to Circuit Court, Wise County.

Action by T. J. Hughes, as administrator of William W. Hughes, against the Virginia Iron Coal & Coke Company. Judgment for plaintiff, and defendant brings error. Reversed and rendered.

D. D. Hull, Jr., of Roanoke, *F. A. Groseclose, Bullitt & Chalkley*, of Big Stone Gap, and *Jackson & Henson*, of Roanoke, for plaintiff in error.

Wm. Werth, of Tazewell, and *Bond & Bruce*, of Wise, for defendant in error.

GRINNAN et al. v. FREDERICKSBURG LODGE NO. 4, A. F. & A. M., et al.

March 16, 1916.

[88 S. E. 79.]

1. Dead Bodies (§ 5*)—Removal—Power of Equity.—A court of equity, notwithstanding the absence of legislation on the subject, has

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

power, in its sound judicial discretion, to authorize the removal of graves or cemeteries in a proper case, after due consideration of all the facts, and with due regard to the rights and feelings of all concerned.

[Ed. Note.—For other cases, see *Dead Bodies*, Cent. Dig. § 5; Dec. Dig. § 5.* 2 Va.-W. Va. Enc. Dig. 731.]

2. Cemeteries (§ 15*)—Right of Burial—License.—The interest which one may have in a burial lot in a cemetery is not a fee, but is a privilege or license to make interments in the lot exclusively of others, as long as the cemetery remains as such.

[Ed. Note.—For other cases, see *Cemeteries*, Cent. Dig. §§ 16-18; Dec. Dig. § 15.* 2 Va.-W. Va. Enc. Dig. 731.]

3. Dead Bodies (§ 5*)—Disinterment—Injunction—Evidence.—A Masonic lodge in 1784 was given a one-half acre lot in trust for the use of the lodge, and, shortly afterwards by acts, but without a formal dedication, set it aside as a burial place for its deceased members, and received contributions for the erection of a "George Washington Memorial Temple," and in 1912 resolved that the remains of those interred in the proposed site of such temple should, in a reverent and proper manner be disinterred and removed to another part of the lot, with the right of relatives to take the remains for interment elsewhere. On a bill by parties, alleging that their ancestors had been buried in the cemetery to enjoin such removal, as an injury to their rights and feelings, it appeared that the cemetery had been neglected and had become unsightly, and that the erection of the temple would probably result in beautifying and caring for the burial part of the lot. Held, in view of Code 1904, § 1416a, permitting removal of cemeteries under certain circumstances and conditions, that the proposed removal would not be enjoined.

[Ed. Note.—For other cases, see *Dead Bodies*, Cent. Dig. § 5; Dec. Dig. § 5.* 2 Va.-W. Va. Enc. Dig. 731.]

Error to Circuit Court, Spotsylvania County.

Bill by Daniel Grinnan and others against Fredericksburg Lodge No. 4, Ancient Free & Accepted Masons, and others. Decree for defendants, dismissing the bill, and complainants bring error. Affirmed.

A. T. Embrey, of Fredericksburg, and *S. A. Anderson*, of Richmond, for plaintiffs in error.

St. George R. Fitzhugh, *C. O'Conor Goolrick*, *W. W. Butzner*, and *F. M. Chichester*, all of Fredericksburg, for defendants in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.